

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

PROPOSED CHANGES IN THE REGULATIONS

California Code of Regulations
Title 4. Business Regulations
Division 9. Division of Measurement Standards, Department of Food and Agriculture
Chapter 8. Motor Oil Fee

INITIAL STATEMENT OF REASONS

Proposed changes are underlined
Proposed deletions are ~~strikethrough~~

PROBLEM STATEMENT

The California Department of Food and Agriculture (Department), Division of Measurement Standards (DMS), Fuels, Lubricants, and Automotive Products (Program) proposes this rulemaking to identify, mediate, and seek to resolve the following concerns:

For more than 80 years, the Department's Program within DMS has regulated traditional motor vehicle fuel types such as gasoline, No. 2; diesel, and No. 1 diesel. However, in recent years those fuels have been engineered into different formulations and other fuel types that require more costly, complex analyses to verify fuel quality specifications. Similarly, traditionally regulated lubricants and automotive products such as motor oil, transmission fluid, and engine coolants have been engineered into other formulations and new types that require additional and more complex analyses than before. Additionally, they require more resources to regulate and enforce the advertising and labeling requirements.

In addition to the traditionally regulated motor vehicle fuels, lubricants, and automotive products, the presence of alternative and renewable motor vehicle fuels (petroleum and non-petroleum sourced) such as biodiesel, renewable biodiesel, dimethyl ether, ethanol- and methanol-gasoline blends, electricity, gaseous hydrogen, compressed natural gas, liquefied natural gas, and propane, although at different rates, have all increased in the marketplace. Relatively new formulations of lubricants and automotive products such as low-viscosity motor oils for high fuel efficiency engines, synthetic motor oils, bio-based motor oils, three relatively new types of transmission fluid, diesel exhaust fluid (DEF) for diesel emissions systems, glycerin-based, waterless, and extended life engine coolants have all experienced positive growth trends, albeit slightly, in the marketplace. Each new formulation or type of motor vehicle fuel, lubricant, and automotive product introduced in the marketplace requires additional, costly sampling and testing to regulate and enforce. As a result of the growing market of each of the aforementioned products, effective in 2016, Assembly Bill (AB) 808 (Ridley-Thomas, Statutes of 2015, Chapter 591) amended Business and Professions Code (BPC) Chapters 14 and 15 to include each of those products in the general provisions and

mandated oversight and enforcement activities of the Department. Consequently, the passage of that legislation greatly expanded the scope of the Program's regulatory and enforcement activities, and the cost to implement them increased. As with many programs experiencing an expanded scope of authority and responsibility, current Program resources, including but not limited to revenue, personnel, vehicle fleet, equipment, and supplies are no longer sufficient to fully implement and maintain all Program activities. New sampling equipment and supplies, testing instrumentation, and additional staff training are required to collect and analyze samples of an expanded variety of liquid and gaseous fuels, lubricants, and new automotive products.

Regulatory and enforcement activities of the Program are primarily funded by the motor oil assessment fee (MOAF) on all motor oil produced, distributed, or imported for retail sale in California. The Program utilizes the MOAF to implement, regulate, and enforce all motor vehicle fuels (petroleum and non-petroleum sourced), lubricants, and other automotive products. The MOAF is authorized in BPC Division 5, Chapter 14, Article 4, § 13431 to be no greater than five cents (\$0.05) per gallon of motor oil. Current regulation sets the MOAF at four cents (\$0.04) per gallon of motor oil that will revert to three cents (\$0.03) per gallon of motor oil on January 1, 2018, unless a regulation establishing a different MOAF amount is promulgated.

When the MOAF regulations contained in California Code of Regulations (CCR), Title 4, Division 9, Chapter 8 were amended in 2012, some of the aforementioned alternative motor vehicle fuels, lubricants, and new automotive products were either not yet engineered, available for retail sale, or necessarily growing in the marketplace. It was not possible then to forecast or predict the need to expand the Department's authority and oversight activity. It is now necessary to propose rulemaking that increases the fee to its statutory limit and removes the language reverting the MOAF to its former value. The Secretary of the Department is granted the authority to adopt such regulations as is reasonably necessary to carry out the provisions of Division 5 of the BPC in § 12027. Increasing the MOAF ~~The increased fee will~~ allow the Program to implement its current regulatory activities which include a much ~~vastly~~ broader scope of authority ~~and regulatory activities today than ever before.~~

The volume of motor oil sold in California is in decline in recent years as vehicle manufacturers have engineered internal combustion or compression ignition engines with longer recommended oil change intervals and non-petroleum operated vehicles with partially or fully electric motors no longer requiring motor oil. However, regardless of motor oil usage all vehicle types still operate using other lubricants and automotive products requiring regulation and enforcement. In fiscal year (FY) 2009/2010, over 122.7 million gallons of motor oil were assessed the MOAF in the state. By FY 2015/2016, the assessable volume of motor oil declined by over 16%, approximately 20 million gallons, to 102.2 million gallons. The Program experienced a significant decline in Program revenue of approximately \$800,000 over five fiscal years. The downward trend is expected to continue into the future. At the same time, the scope of the Department's authority and regulatory activities expanded causing increased Program expenditures.

~~Lastly,~~ The Department has analyzed the MOAF remittance of all motor oil dealers for the last five fiscal years and ~~found~~ finds a need to expand the annual MOAF reporting criteria. Regulation currently sets the annual MOAF reporting criteria to less than 5,000 gallons of motor oil per year. Under the current annual MOAF reporting criteria, approximately 30 motor oil dealers are approved by the Department to report annually while approximately 82 report quarterly. The Department ~~found~~ finds that extending the annual MOAF reporting criteria from less than 5,000 gallons to less than or equal to 30,000 gallons of motor oil per year benefits approximately 28-32 more relatively small motor oil dealers. Under the proposed regulations, the affected motor oil dealers may apply for approval from the Department to report annually instead of quarterly. Annual reporting decreases the reporting requirements and costs associated with quarterly reporting.

Without this rulemaking to increase the MOAF, the Program's recently expanded scope of authority and ability to perform the required regulatory testing and oversight activities will be negatively impacted. Current MOAF revenue of four cents (\$0.04) per gallon will be reduced by 25%, to three cents (\$0.03) per gallon in 2018. Compounding the issue, the total volume of motor oil sold in California is in decline. Those circumstances severely affect the Program's ability to implement its broader scope of mandated responsibilities. A larger number of motor oil dealers will not be qualified to report annually without this proposed rulemaking regulation. Other California consumers and businesses, along with retailers of motor vehicle fuels, lubricants, and automotive products, alike, may experience the negative impact of such Program reductions potentially inviting harm to both purchasers and retailers of those products.

BACKGROUND

~~The Department preserves and maintains California's legal standards of measurements and has authority over, and is responsible for, verifying product specifications, performing accurate test method standards, and ensuring correct labeling and method of sale requirements of retail transactions. The Program is responsible for the oversight, regulation, and enforcement of all motor vehicle fuels, lubricants, and automotive products sold at retail in the state. The Program Department has the authority and responsibility under BPC Division 5, Chapter 14 (Fuels and Lubricants) and Chapter 15 (Automotive Products) to establish regulations that enforce quality, performance, and labeling standards for motor vehicle fuels, lubricants, and other automotive products. Products are collected in the field, primarily at retail business locations, and analyzed at the Department's laboratories in Sacramento and Anaheim to verify they meet minimum standard specifications for quality, performance, and labeling. The Department is also charged with ensuring correct labeling and method of sale requirements of retail transactions. According to the Department's "California Fuels, Lubricants, and Automotive Products Program Regulatory Oversight Report 2012-2016," published in December 2016, the Program has increased its regulatory efforts by nearly fivefold with collecting and analyzing fuels and automotive products in the last four years. The Program receives and investigates over 600 complaints per fiscal year, conducts surveys and surveillance, and collects over 3,800 samples of various fuel and automotive products. throughout the year for laboratory analyses.~~

The Program's regulatory and enforcement activities protect California consumers, business, and the vehicles they operate by ensuring motor vehicle fuels (petroleum and non-petroleum sourced), lubricants, and other essential automotive products such as motor oil, transmission fluid, engine coolant, and brake fluid meet test specifications and requirements for quality, performance, proper labeling, and method of sale. Automotive fuels, lubricants, and products that do not meet specification or proper labeling and method of sale requirements are removed from sale and appropriate enforcement action is taken. Enforcement of these standards creates a foundation for fair, transparent, and competitive trade in the marketplace. Retailers of such products can productively and profitably operate while California consumers and businesses purchasing those products have confidence they are correctly labeled for proper operation of the vehicle, are of appropriate quality, and perform as expected.

Since 2012, Program expenditures such as salaries and benefits, overhead, and other administrative costs have all increased. In July 2015, professional scientist managers and supervisor's salaries increased on average 38% and beginning July 2016, employee union contracts were further amended to increase rank and file salaries and benefits by approximately 5% per year over three consecutive years ending July 2018. The Program had no control over those increased expenditures yet must remain financially responsible and within budget. Program Special Investigators and other personnel operate 12 vehicles on a daily basis to conduct inspections and collect samples. The Program's vehicles have an average of 173,000 vehicle miles. The California Department of General Services' State Fleet Handbook (July 2016) recommends vehicle replacement at or before 120,000 vehicle miles in order to ensure the safety and security of personnel operating them. Due to the wear and tear of high vehicle mileage, the Program incurs excessive repair costs to maintain its aging fleet.

The Program allocates approximately 15% of its annual budget to fulfill cooperative agreements made with all 58 counties and has the legal responsibility to provide instructions, recommendations, support, and training for county weights and measures officials in accordance with BPC Division 5, Chapter 2, Article 1, §§ 12100 and 12104. In turn, county officials assist the Program with implementing state law by sampling products, enforcing signage and labeling requirements, and investigating consumer complaints against retailers of automotive fuels, lubricants, and products within their jurisdiction. The Program provides county officials with technical information when requested, personnel support during enforcement actions, product sampling equipment, and the appropriate training courses each county requires.

Motor oil dealers pay the MOAF to the Department quarterly, or for those qualified, annually. There are about 150 motor oil dealers registered with the Department, but not all produce, distribute, or import motor oil for retail sale in California during any one fiscal year. In FY 2015/2016, there were 113 motor oil dealers required to pay the MOAF. The number of payees remained over 100 per year for the last five fiscal years. For administrative purposes, only the Department designated three categories of motor oil dealers: small, medium, and large. The

categories are based on the volume of motor oil produced, sold, distributed, or imported for retail sale in California, and are not part of the legal definition of a small business found in the California Government Code. The small category represents 30,000 gallons or less, medium ranks between 30,000 gallons and 300,000 gallons, and large is designated as greater than 300,000 gallons. Typically, the four largest motor oil dealers pay roughly 60% of the total MOAF, with an average quarterly payment of \$154,600 each. The next 16 largest motor oil dealers pay an average of \$20,320 each per quarter. Combined, the 20 largest motor oil dealers account for over 95% of the total fee paid. Fees paid by each of the remaining motor oil dealers range from \$0.68 to \$3,135.84 per quarter.

Although the Program's regulatory and enforcement activities are primarily funded by the MOAF, in FY 2016/2017 the Department secured additional funding of \$1.1 million per year from the Cost of Implementation Fee Regulation, administered by the California Air Resources Board, in accordance with Health and Safety Code, Division 25.5, Part 7, § 38597. The supplemental funding is only to be allocated for the Program's implementation and improvement of alternative and renewable motor vehicle fuels (non-petroleum sourced) and is not to be used for its activities associated with petroleum sourced fuels. That funding source only partially offsets the increased expenses of the specialized, costly, and time-intensive sampling and analyses of hydrogen and CNG used as alternative motor vehicle fuels. Despite the additional funding, the Department is still experiencing a financial deficit of approximately \$1.1 million to implement all its regulatory, oversight, and enforcement responsibilities, and that deficit is expected to grow in future years. To that end, the Department proposes this regulation rulemaking to maximize the MOAF for petroleum sourced regulatory activity while the supplemental funding source supports the regulatory activity of alternative and renewable fuels.

The continued growth of alternative motor vehicle fuels such as hydrogen and CNG is essential for California to achieve the Governor's policy goals of reducing petroleum dependence and greenhouse gas emissions. The Governor's Executive Order 4-29-2015 set a goal for reducing greenhouse gas (GHG) emissions to 40% below 1990 levels by the year 2030. Vehicular transportation accounts for almost 40% of the state's generation of GHG emissions. More low- and zero-emission alternative fuel vehicles are required to meet that goal. Minimum alternative fuel quality standards enforced by the Program are required for consumers to feel confident purchasing a greater number of alternative fuel vehicles. The Program is committed to assist California with achieving the Governor's Executive Order.

LEGISLATIVE HISTORY

The California Oil Substitution Act of 1931 originally provided Program funding for the Department through a license fee of motor vehicle fuel pumps. At no time then or since then has general fund money been authorized and allocated by legislation to fund the Program.

In 1979, the Legislature eliminated the fuel pump license fee and replaced it with a new funding source, the MOAF, in accordance with AB 1021 (Hannigan, Statutes of 1979,

Chapter 1016). That bill adopted Article 4, §§ 13430 – 13434, inclusive, to Chapter 14 of the BPC. Initially, the MOAF was set at 1.4 cents (\$0.014) per gallon with a statutory maximum of two cents (\$0.02) per gallon. In accordance with BPC § 13434 the MOAF shall be used for the administration and enforcement of BPC Chapters 14 and 15, et al.

In 2009, the Legislature raised the MOAF to a statutory maximum of five cents (\$0.05) per gallon under Senate Bill (SB) 260 (Wiggins, Statutes of 2009, Chapter 573). Recent legislation was adopted in 2016 under AB 808 that broadened the authority and regulatory responsibilities of the Department to include many relatively new and emerging motor vehicle fuel types, lubricants, and automotive products. This proposed regulation rulemaking will further implement the requirements authorized under AB 808.

REGULATORY HISTORY

In 2009, regulation was passed to increase the MOAF to three cents (\$0.03) per gallon of motor oil. Prior to and during 2009 the volume of motor oil sold in California sharply declined by nearly 16%, consequently diminishing 2009 MOAF revenue. During the following years, Program, revenue did not balance expenditures. It became necessary for the Program to borrow from the Department's Operating Reserve Fund to balance its annual budget. By 2012, the reserve fund was nearly depleted, yet the MOAF account still had not recovered. The same year the Department amended the MOAF to four cents (\$0.04) per gallon in the California Code of Regulations, Title 4, Division 9, Chapter 8, § 4304(a), to further mitigate the Program's deficit and remain financially responsible. That rulemaking also stipulated that the fee revert to its 2009 level of three cents (\$0.03) per gallon on January 1, 2018, unless another regulation was adopted. This proposed regulation rulemaking is necessary and required to maintain adequate revenue for a financially responsible Program.

DESCRIPTION OF THE PUBLIC PROBLEM AND CONDITIONS THE PROPOSED REGULATION INTENDS TO ADDRESS

California consumers expect motor vehicle fuels and products available for retail sale to perform as intended. The Program implements state law and provides the necessary public services to accomplish that task. The public problem is that in order to remain fiscally responsible over the last five fiscal years, the Program has had to drastically reprioritize its oversight, regulation, and enforcement activities for motor vehicle fuels, lubricants, and other automotive products. Hiring, training, investigative and enforcement activities were modified so that mission critical activities remained the highest priority. Training, support, and oversight of county weights and measures officials have also been reduced. Consequently, the Program decreased its enforcement presence in the marketplace. Replacement of outdated laboratory computers, equipment, and much needed laboratory upgrades were indefinitely postponed, thus negatively affecting sample testing and verification of certain motor vehicle fuels, lubricants, and automotive products. The Program has also not been able to replace vehicles in its aging fleet for the last five fiscal years because of limited funding.

Following the fee increase to four cents (\$0.04) per gallon in 2012, revenue from the MOAF peaked at \$4.20 million in FY 2013/2014. In FY 2015/2016, revenue dropped to \$4.12 million. Even now, in FY 2016/2017 revenues generated from the MOAF are not adequate to fund the Program's expanded scope of mandated oversight, regulatory, and enforcement activities. Reverting the fee will only exacerbate the public problem and disallow the Program to financially recover to continue its legally mandated duties.

The proposed ~~regulation~~ ~~rulemaking~~ will increase the MOAF to five cents (\$0.05) per gallon and remove the language reverting it to its former value. It will allow an opportunity for the Program to address its expanded requirements; counter the decreasing volume of motor oil sold; and, provides protection to California consumers, businesses, and retailers of those products. This rulemaking will help the Program implement state law and continue to regulate motor vehicle fuels, lubricants and automotive products, and protect the common public interest.

PURPOSE AND NECESSITY OF THE PROPOSED REGULATION

The purpose of the proposed ~~revisions~~ ~~rulemaking~~ to CCR Title 4 Chapter 8, §§ 4300-4309, inclusive, is to make necessary non-substantive and substantive amendments to the regulations ~~which comply with the six standards established in the Administrative Procedure Act (APA) (Government Code section 11340 et seq.). The APA standards are (1) necessity, (2) authority, (3) clarity, (4) consistency, (5) reference, and (6) nonduplication.~~

NON-SUBSTANTIVE AMENDMENTS

Non-substantive amendments will not change the requirements or intent of existing regulations. They include grammar and syntax edits, clarification of regulatory language, and edits to reference and authority citations for each section. The following sections contain proposed non-substantive changes, the applicable APA standard(s), and if necessary, the specific purpose for the change. ~~Non-substantive changes will not change the requirements or intent of existing regulations.~~

- **CCR Title 4 § 4300 (a).** The Department proposes adding the word “as”.
(APA Standard: Clarity)
- **CCR Title 4 § 4300 (b).** The Department proposes amending the word “Subchapter” to “Chapter”. (APA Standard: Clarity)
- **CCR Title 4 §§ 4304 (Title), 4306, and 4308.** The Department proposes amending the word “Return(s)” to “Remittance Form(s)” throughout. (APA Standards: Authority and Clarity)
- **CCR Title 4 § 4304 (b).** The Department proposes adding, amending, or striking multiple words relating to MOAF remittance forms and payment procedures. (APA Standards: Authority and Clarity)

- **CCR Title 4 § 4304 (c), (d), and (e).** The Department proposes striking and replacing language relating to delinquent remittance forms and the process of submittal. (APA Standards: Authority and Clarity)

Specific Purpose. The current wording in § 4304 (c) regarding delinquent payments causes confusion among some motor oil dealers. The proposed amendments are intended to simplify and clarify the language. Other amendments to § 4304 (c), (d), and (e) are also clarifying changes.

- **CCR Title 4 §§ 4304, 4305, 4306, 4307, 4308, and 4309 (NOTE).** The Department proposes striking reference to BPC § 13433 as this is incorrect. (APA Standards: Authority and Reference)
- **CCR Title 4 § 4307.** The Department proposes adding “of this Chapter”. (APA Standard: Clarity)
- **CCR Title 4 § 4308 (d).** The Department proposes deleting the requirement to provide a report on or before December 31, 2016. (APA Standards: Authority and Clarity)

Specific Purpose. The Department fulfilled this requirement by completing its “California Fuels, Lubricants, and Automotive Products Program Regulatory Oversight Report 2012-2016,” (December 2016). That regulation is no longer necessary or required and if not repealed will be an artifact of the previous rulemaking.

SUBSTANTIVE AMENDMENTS

The following sections contain proposed substantive changes, the applicable APA standard(s), and the specific purpose. ~~The following are explanations of substantive edits proposed with this rulemaking:~~

- **CCR Title 4 § 4300 (NOTE).** The Department proposes adding “and 13431” as a Reference. (APA Standard: Reference)

Specific Purpose. BPC § 13431 identifies the persons required to pay the MOAF and sets the motor oil fee amounts.

- **CCR Title 4 § 4302 (NOTE).** The Department proposes adding “and 13433” as an Authority. (APA Standard: Authority)

Specific Purpose. BPC § 13433 authorizes the Department to prescribe the frequency and procedures for MOAF payments.

- **CCR Title 4 § 4304 (a).** The Department proposes amending “four” to “five”, “(\$0.04)” to “(\$0.05)”; adding “effective January 1, 2018” and striking “This section

shall remain in effect until January 1, 2018 and as of that date the fee shall revert to three cents (\$0.03) per gallon, unless a regulation establishing a different fee is promulgated before January 1, 2018". (APA Standard: Necessity and Authority)

Specific Purpose. The passage of Assembly Bill 808 in 2016 broadened the Department's authority and marketplace oversight responsibilities to include new and emerging motor vehicle fuel types, lubricants, and automotive products. The proposed regulation is necessary to implement the Department's mandated responsibilities and while remaining financially responsible. The Department would experience a 25% or greater reduction in revenue and not be able fulfil its responsibilities without proposing this regulation.

Program expenditures such as salaries and benefits, overhead, and other administrative costs have all increased in the last two years. In July 2015, professional scientist manager and supervisor salaries increased on average 38% and beginning July 2016, employee union contracts were further amended to increase rank and file salaries and benefits by approximately 5% per year for the next three years. With increased administrative expenditures it is necessary to propose an increase of the MOAF to its statutory maximum to remain financially responsible.

The volume of motor oil manufactured and sold in California is in decline in recent years. This is the result of vehicle manufacturers that have engineered internal combustion or compression ignition engines with longer recommended oil change intervals, and the introduction of non-petroleum operated vehicles with partially or fully electric motors which no longer require motor oil. Since the MOAF is calculated using gallons of motor oil, the Department will experience both a reduction in gallons of motor oil manufactured and sold in California and a reduction in the MOAF. This will severely and negatively impact the future revenue and performance of the Department.

According to the Department's "California Fuels, Lubricants, and Automotive Products Program Regulatory Oversight Report 2012-2016," published in December 2016, the Program has increased its regulatory efforts by nearly fivefold with collecting and analyzing fuels and automotive products in the last four years. Despite the recent increased program activity, the Program continues to find noncompliant diesel fuel, brake fluid, and transmission fluid, indicating that continued marketplace oversight is necessary.

CCR Title 4 § 4304(a)

~~A permanent increase of the MOAF to five cents (\$0.05) per gallon from the current four cents (\$0.04) per gallon is proposed in § 4304(a), and is required to maintain the Program's mandated oversight, investigative and enforcement activities. Another proposed amendment to that section removes the language to revert the MOAF to a lesser value in the future. Reverting the MOAF to three cents (\$0.03) per gallon is not fiscally responsible for this will not allow the Program to implement and achieve its mandated regulatory testing and~~

oversight requirements. Specifically, if the proposed amendment to § 4304(a) is not adopted, Program revenue will decrease by no less than 25% beginning January 1, 2018, when the MOAF will revert. The Program will experience a severe loss of revenue and it will be threatened to significantly reduce oversight and enforcement activities even further. Since salaries, personnel benefits, and the associated overhead of those expenditures is the greatest portion of the Program's annual budget, additional personnel reductions and extended vacancies may likely be necessary to remain fiscally responsible.

- **CCR Title 4 § 4304 (b).** The Department proposes to replace the “Motor Oil Return Form” (Rev. 6/30/12) with the revised “Motor Oil Remittance Form” (Form 41-054, Rev. 1/1/18), and incorporate it by reference into § 4304, et seq. The Department proposes adding, reformatting, amending, and striking multiple words, phrases, and sections of the “Motor Oil Return Form.” The proposed “Motor Oil Remittance Form” contains revisions that improve readability, organization, and ease of use for motor oil dealers. The form is revised to reflect the proposed MOAF increase from four cents (\$0.04) to five cents (\$0.05) per gallon of motor oil. Due to the proposed increase in the number of motor oil dealers that may be approved to report annually, the Department proposes to separate the quarterly reporting requirements from the annual reporting requirements on the form. To administratively track the types of motor oil dealers and correlate them to the payment of fees, the Department is amending four checkmark boxes in “Section A. Company Information” to indicate the type of activities the motor oil dealer is involved with: Producer/Blender; Packager; Distributor/Wholesaler; or Retailer. Previously, instructions on how to complete the form were not included with the form. The proposed incorporated form now includes instructions. Throughout the Chapter the term “return” is amended to read “remittance form” to remain consistent with the proposed amendments to the form. (APA Standards: Necessity, Authority, Clarity and Consistency)

Specific Purpose. BPC § 13433 authorizes the Department to prescribe the procedures for MOAF payments. It is necessary to revise the “Motor Oil Remittance Form” because without doing so it would not reflect the proposed MOAF increase. In years past, some motor oil dealers contacted the Department and expressed that the form was unclear, confusing, and difficult to complete. The Department seeks to clarify the form for those reasons. It contains many revisions intended to improve readability and make it more user-friendly, including amended instructions.

CCR Title 4 § 4304(b)

The purpose of the proposed amendment to § 4304(b) is to rename the title of the “Motor Oil Fee Return Form” to the “Motor Oil Fee Remittance Form,” edit the revision date, and include the form's identification number (Form 41-054). The form was revised to make it more user-friendly, reflect the proposed MOAF increase, improve readability and formatting, and clarify and simplify its language. The proposed form also includes revised instructions on how to complete it.

- **CCR Title 4 § 4304(f).** The Department proposes amending the qualifications for motor oil dealers qualifying for quarterly reporting to those with volumes of “less than 5000” to “less than or equal to 30,000” gallons. The Department also proposes establishing an annual reporting period that coincides with the California state government fiscal year, July 1 – June 30. (APA Standards: Authority and Clarity)

Specific Purpose. Currently, § 4304_(f) allows approximately 30 motor oil dealers that produce less than 5,000 gallons of motor oil per year to prepare the Motor Oil Remittance Form and remit payment annually instead of quarterly. The proposed amendment to § 4304_(f) increases the allowed volume of motor oil for annual reporting from less than 5,000 gallons to 30,000 gallons or less. In addition to those companies already remitting the MOAF annually, the proposed rulemaking benefits approximately 28-32 additional small motor oil dealers producing more than 5,000 gallons yet less than or equal to 30,000 gallons of motor oil per year. Those companies will have the ability to request approval from the Department to report annually. This proposed rulemaking allows nearly half of all motor oil dealers, approximately 60 in all, to qualify for annual reporting. The cost savings experienced by those motor oil dealers will help offset the proposed increase of the MOAF. With the potential increase of nearly half of the motor oil dealers qualified to report annually, it is necessary to establish an annual reporting period to coincide with the State fiscal year. This will clarify and simplify the administrative process of receiving remittance payments from motor oil dealers approved to report annually at the end of the State fiscal year.

CCR Title 4 § 4308

~~Lastly, this proposed rulemaking repeals subdivision (d) of § 4308 requiring the Program to produce a comprehensive report of petroleum Program activities on or before December 31, 2016. The Department fulfilled this requirement by completing the Fuels, Lubricants, and Automotive Products Program Report (December 2016). That regulation is no longer necessary or required and if not repealed will be an artifact of the previous rulemaking.~~

BENEFITS OF THE REGULATION

This rulemaking secures adequate funding in the future to meet the Program’s expanded scope of regulatory responsibilities and maintain an enforcement presence throughout the state. To protect California consumers and businesses, sampling and testing of motor vehicle fuels, lubricants, and automotive products must be done on a regular basis to ensure that quality standards and product-labeling requirements are met. Enforcement of labeling, advertising, and method of sale regulations protects consumers from misbranded products, misleading advertising, and maintains a level playing field for producers, distributors, and retailers of those products. Products that do not meet specifications may decrease vehicle operation and performance, fuel mileage, and overall durability that purchasers of those products expect and require. Those products may also become corrosive to critical vehicle

systems, increasing the risk of premature and costly repairs to the engine, transmission, braking, or emissions systems. This rulemaking protects the investment of vehicle owners and helps protect against excessive repair costs.

This rulemaking allows the Program to contribute to the protection of public and environmental health with regard to vehicle emissions. Fuels not meeting specifications may increase tailpipe emissions of nitrogen oxides (NO_x), smog precursors, and other toxic pollutants. Relatively new automotive products such as DEF also play a critical role in protecting public health and the environment as well. DEF reduces the emissions of toxic NO_x gases from diesel engines to meet stringent state and federal standards. However, DEF that does not meet specifications may possibly cause increased emissions of NO_x, decreased engine performance, excessive wear, or damage to the emission system leading to costly repairs. Currently, the Department's laboratories are not fully equipped or upgraded to begin quality product testing of DEF according to the specification in the International Organization for Standardization's (ISO) test method, ISO 22241-1 adopted in BPC § 13700(f). This rulemaking will provide the Department an opportunity to acquire necessary testing instrumentation and laboratory upgrades to begin proper specification testing of new, reformulated, and bio-based fuels, lubricants, and automotive products.

Maximizing the MOAF with this rulemaking will allow the Department to make better use of additional, complementary funding sources like the Cost of Implementation Fee Regulation to regulate and enforce alternative and renewable motor vehicle fuels. It will also assist California with achieving the Governor's Executive Order 4-29-2015. The continued growth of alternative motor vehicle fuels such as hydrogen and CNG is essential for California to achieve the Governor's policy goals of reducing petroleum dependence and greenhouse gas emissions. Using grants provided by the California Energy Commission, the state has invested millions of dollars to support the construction of hydrogen and CNG fueling stations. Those and future stations support the growth of low- and zero-emission alternative fuel vehicles throughout the state. This rulemaking allows the Program to frequently sample and test fuels dispensed at those stations to provide consumer confidence when purchasing those types of vehicles. The sampling and analysis of CNG and hydrogen fuel types requires specialized analytical equipment, new testing procedures, and much needed laboratory upgrades. Special training can be provided to Program staff that performs field sampling of gaseous fuels. Adequate Program funding and staffing is essential if these new responsibilities are to be met. The Program supports the Governor's goals and this rulemaking will provide funding to implement all Program activities.

Lastly, this rulemaking provides a potential cost benefit to small motor oil dealers who will be qualified to pay the MOAF annually rather than quarterly. The savings realized by those motor oil dealer decreases processing fees, reduces overall administrative costs, and in some cases may improve profitability despite the proposed MOAF increase.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department relied on the following documents to draft the proposed regulatory language of this rulemaking:

- BPC Division 5, Chapter 14 and 15, et al.
- AB 1907 (Ridley-Thomas, Statutes of 2014, Chapter 805)
- AB 808 (Ridley-Thomas, Statutes of 2015, Chapter 591)
- California Oil Substitution Act of 1931
- AB 1021 (Hannigan, Statutes of 1979, Chapter 1016)
- SB 260 (Wiggins, Statutes of 2009, Chapter 573)
- Department of Toxic Substances Control and California Integrated Waste Management Board, www.dtsc.ca.gov, “*Evaluation of High Efficiency Oil Filters in the State Fleet*,” June 2008, [www.dtsc.ca.gov/Technology Development/OPPTD_FLY_High-Efficiency-Oil-Filters.cfm](http://www.dtsc.ca.gov/Technology%20Development/OPPTD_FLY_High-Efficiency-Oil-Filters.cfm), accessed on April 18, 2017
- Department of General Services State Administrative Manual, www.sam.dgs.ca.gov, “*Replacement Schedule Criteria*,” SAM – Transportation Services, Chapter 4126, Rev. 433, February 2016, www.documents.dgs.ca.gov/sam/samprint/new/SAM_Master/SAM_Master_File/Entire_SAM/EntireSAM.pdf, accessed on April 18, 2017
- Department of Food and Agriculture, Division of Measurement Standards <http://www.cdffa.ca.gov/dms>, “*California Fuels, Lubricants, and Automotive Products Program Regulatory Oversight Report 2012-2016*,” December 2016, www.cdffa.ca.gov/dms/regulations.html https://www.cdffa.ca.gov/dms/programs/Publications/Reports/FLAPP_Report2012-2016.pdf, accessed on April 18, 2017
- BPC Division 25.5, Part 7, § 38597
- “Lubricants Industry Factbook, 2016-2017,” *Lubes ’n’ Greases*, August 2016, pp.16 and 18
- Department of General Services, Office of Fleet and Asset Management, <https://www.dgs.ca.gov/dgs/home.aspx>, “*State Fleet Breakdown – FAMS Data as of 08/09/2017*,” (August 2017), data table included in an email message sent on August 18, 2017
- American Automobile Association, www.texas.aaa.com, “*AAA Engine Oil Research: AAA proprietary research into the differences between conventional and synthetic engine oil*,” May 2017, <https://www.texas.aaa.com/automotive/advocacy/engine-oil-quality-study.html>, accessed on July 25, 2017

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulation will likely affect all registered motor oil dealers that manufacture, distribute, or import motor oil for retail sale in California. Motor oil dealers directly pay the MOAF to the Department.

In FY 2015/2016 California, businesses produced and imported about 102.2 million gallons of motor oil subject to the MOAF and remitted approximately \$4.12 million to the Department. California's total motor oil production in gallons significantly declined by no less than 16% in the last five fiscal years and by 32% since FY 2005/2006. Oil production in the state for the next five years is forecasted to be approximately level at about 100 million gallons with a very slight decline of 0.6% or less. The rate of growth in the state will, on the average, decrease to 0.0% by 2020. California's market similarly compared to the national market of oil production over the same time period. National motor oil production in the last five years increased by about 3%, and had a near level annual growth rate of 0.6% between 2010 and 2015. By 2020 the national average growth rate is forecasted to decline to 0.0% according to the Freedonia Group as reported in *Lubes 'n' Greases*, Lubricants Industry Factbook, 2016-2017 (August 2016). Considering the declining trends of state and national motor oil production in the next five years, it is paramount the MOAF increases to the statutory limit. At the proposed MOAF of five cents (\$0.05) per gallon and with the forecasted decrease in oil production over the next five fiscal years, the proposed rulemaking will increase the Program's revenues by \$0.89 million to approximately \$4.98 million annually by 2020. Additionally, increasing the MOAF to its statutory maximum is necessary to fulfill the Department's requirement to maximize that source of funding before utilizing additional sources of funding such as the Cost of Implementation Fee Regulation or other alternatives that may present themselves in the future.

There is a state fiscal savings experienced by increasing the annual MOAF reporting criteria from less than 5,000 gallons to less than or equal to 30,000 gallons of motor oil. The Department expends, on average and in whole, two hours per quarter per motor oil dealer to process quarterly MOAF payments. The average hourly state rate of \$150.00 per hour is used to estimate the cost savings. Currently, there are approximately 82 motor oil dealers that remit payment on a quarterly basis. The Department's cost to process quarterly fees is approximately \$98,400 per year ($82 \times 4 \times \300.00). There are approximately 31 motor oil dealers that remit payment on an annual basis. The Department's cost to process annual fees is approximately \$9,300 ($31 \times \300). The combined cost to process all motor oil dealer payments is approximately \$107,700 per year.

If the annual MOAF reporting criteria is raised to less than or equal to 30,000 gallons only about 51 motor oil dealers will be required to report quarterly. The estimated Departmental costs to process those payments will decrease to approximately \$61,200 ($51 \times 4 \times \300.00). Approximately 62 motor oil dealers will remit payment on an annual basis costing approximately \$18,600 to the Department. The combined cost to process all motor oil dealer payments under this rulemaking is \$79,800. The proposed regulation will positively affect the Department by saving approximately \$27,900 per year in processing fees. This rulemaking decreases the Department's expenditures related with processing MOAF payments.

The Department sought to estimate the overall fiscal impact to the State of California. In a report compiled by the California Department of General Services (DGS), Office of Fleet and Asset Management, the number of state owned vehicles that require oil change services

includes: 12,788 sedans and SUVs; 21,309 trucks, vans, and buses; 979 motorcycles; and 3,945 other general purpose vehicles, farm equipment, and construction equipment. The following is an oil change interval cost estimate for the State fleet: Assume State owned sedans and SUVs require on average 1.25 gallons of motor oil per oil change and each automobile is serviced no more than three times per year, the MOAF increase for those automobiles is \$479.55 ($12,788 \times 1.25 \times 3 \times \0.01). Assume State owned trucks, vans, and buses require on average 2 gallons of motor oil per oil change and each truck, van and bus is serviced no more than three times per year, the MOAF increase for trucks is \$1,278.54 ($21,309 \times 2 \times 3 \times \0.01). Assume State owned motorcycles require on average 0.5 gallons of motor oil per oil change and each motorcycle is serviced no more than twice per year, the MOAF increase for motorcycles is \$9.79 ($979 \times 0.5 \times 2 \times \0.01). Assume State owned general purpose vehicles, farm equipment, and construction equipment require on average 3 gallons of motor oil per oil change and each general purpose vehicle is serviced twice per year, the MOAF increase for general purpose vehicles is \$236.70 ($3,945 \times 3 \times 2 \times \0.01). The total estimated cost of this regulation to the State will not exceed \$2,004.58. The overall benefit of the regulation to the State is \$25,895.42 [$\$27,900$ (cost savings to the Department) - $\$2,004.58$ (cost increase to other State agencies to service State vehicles)].

Approximately 28-32 additional motor oil dealers will be positively affected by this proposed rulemaking. The cost of a motor oil dealer collecting sufficient and accurate data, completing the required Motor Oil Fee Remittance Form, and drafting proper remittance to the Department is estimated, on average, to be one hour per quarter per motor oil dealer. The motor oil dealer's assumed average hourly rate of \$150.00 per hour is used to estimate the cost savings. Each of the affected motor oil dealers currently process the MOAF on a quarterly basis costing approximately \$600 ($\150×4) per year. If the annual MOAF reporting criteria is raised to less than or equal to 30,000 gallons those affected will be qualified to report annually, costing approximately \$150 per year instead. The relatively small motor oil dealers that are affected will experience a cost savings of about \$450 ($\$600 - \150) per year. Assuming there is an average of 30 affected motor oil dealers, the proposed rulemaking will result in a combined cost savings of approximately \$13,500 ($\450×30) per year for all affected motor oil dealers. This rulemaking decreases the company's reporting requirement, expenditures, and other overhead costs associated with reporting quarterly. The cost savings helps to offset the proposed MOAF.

For example, if a motor oil dealer producing 30,000 gallons of motor oil produces the same or similar number of gallons in the future, the proposed rulemaking will increase that motor oil dealer's MOAF from \$1,200 to \$1,500 per year; a difference of \$300 per year. Under this proposed rulemaking, that company may be approved by the Department for annual reporting realizing a cost savings of approximately \$450 per year. Despite the increased MOAF, that company will net a savings of about \$150 ($\$450 - \300) per year with this rulemaking. Now assume a motor oil dealer produces 5,001 gallons of motor oil per year and produces the same or similar number of gallons in the future, that motor oil dealer's MOAF will increase by \$50.01 per year with this rulemaking. Using a similar calculation, that company will realize a cost savings of \$399.99 ($\$450 - \50.01) per year by reporting annually. As oil

production decreases the cost savings of this rulemaking increases for those qualified to pay annually.

The following is the Department's retail cost analysis of motor oil under this rulemaking. The Department's estimated retail price of petroleum sourced motor oil is approximately \$20 per gallon and synthetic motor oil is approximately \$28 per gallon. The American Automobile Association released a report similarly estimating the average retail price of a gallon of conventional motor oil to be \$22.40 and the average retail price per gallon of synthetic motor oil to be \$36.00. Assuming the proposed fee increase is fully passed on to the retail consumer, the retail price per gallon of petroleum sourced motor oil will increase by no more than 0.05% ($\$0.01/\$20 \times 100\%$), and no more than 0.035% ($\$0.01/\$28 \times 100\%$) for synthetic motor oil. Therefore, the proposed increase of the MOAF amounts to no more than a 0.05% increase to California consumers.

For example, if an individual consumer uses approximately 1.25 gallons of motor oil per oil change, and performs two oil changes per year, the consumer requires approximately 2.5 gallons of motor oil per year. With this proposed rulemaking the consumer will pay an additional 2.5 cents ($\$0.025$) per year (2.5 gallons \times $\$0.01$) to perform equivalent maintenance to that vehicle.

The estimated retail price of bulk motor oil sold in a 55-gallon drum is approximately \$400 per drum, or more for synthetic motor oil. Assuming the proposed fee increase is fully passed on to the purchaser of bulk motor oil, the retail price per drum will increase by fifty-five cents ($\$0.55$); an increase of no more than 0.14% ($\$0.55/\$400 \times 100\%$) per drum.

This economic impact analysis may vary depending on future annual motor oil production, distribution, and importation of motor oil for retail sale in California. It will also vary depending on the number of hours the Department and motor oil dealers spend processing quarterly versus annual payments, and the average hourly rate each entity pays their personnel to process them.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Based on the Department's economic analysis, of both motor oil dealers and other California businesses, it ~~initially determined this proposed rulemaking would not have a significant, adverse economic impact directly affecting businesses operating in the state, including the ability of motor oil dealers and other California businesses to compete with businesses in other states~~ initially determined the proposed regulation would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department believes the proposed fee increase is a very small increase of the total retail price of oil and can be readily absorbed by motor oil dealers or consequently passed on to retail consumers without adverse economic impact. Both in- and out-of-state motor oil dealers are

equally subject to the MOAF for all oil produced, distributed, or imported for retail sale in California. To help offset the potential financial impact of the increased MOAF on relatively small motor oil dealers the Department proposes to increase the annual MOAF reporting criteria to less than or equal to 30,000 gallons. Those motor oil dealers will experience less financial impact from this rulemaking, and in some cases will experience a cost savings because of it.

The proposed ~~regulation-rulemaking~~ neither increases nor decreases the number of motor oil dealers affected by the MOAF. The proposed ~~regulation-rulemaking~~ will not increase the reporting requirements and paperwork associated with paying the fee for any motor oil dealer. In fact, for a significant number of motor oil dealers reporting requirements and paperwork will decrease.

The financial impact to other California businesses and fleet owners that purchase retail motor oil by the gallon for vehicle maintenance will be as similarly nominal as the impact to other retail consumers in California. Automotive service and repair businesses buying bulk motor oil will also experience a nominal increase in the retail price of bulk motor oil. The proposed rulemaking increases retail pricing of bulk motor oil by no more than 0.14%.

ESTIMATED COST OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES EFFECTS ON PRIVATE PERSONS AND BUSINESSES, INCLUDING SMALL BUSINESSES

The Department initially determined that the proposed regulations:

1. Will not impose a mandate on local agencies or school districts.
2. Will ~~not result in any cost or savings to any~~ a nominal cost to other state agencies.
3. Will not result in any reimbursable costs or savings under Part 7 (commencing with § 17500) of Division 4 of the Government Code to local agencies or school districts.
4. Will not result in any nondiscretionary costs or savings to local agencies or school districts.
5. Will not result in any cost or savings in federal funding to the state.

Based on the Department's economic analysis, it initially determined this rulemaking would not have a significant statewide adverse economic impact on housing costs, public agencies, affected private individuals or other entities in California.

The financial impact to retail consumers in California that purchase retail motor oil by the gallon for vehicle maintenance will be as similarly nominal as the impact to other California businesses that purchase retail motor oil by the gallon. The proposed rulemaking increases retail pricing of motor oil by the gallon to no more than 0.05%.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternative 1 – Do Nothing:

If the Department chooses to do nothing, the MOAF will revert to three cents (\$0.03) per gallon beginning January 1, 2018. The Motor Oil Remittance Form will not be revised, and the annual MOAF reporting criteria will remain at less than 5,000 gallons of motor oil production per year. Taking no action will immediately reduce the Program's budget by no less than 25% as legislation has not established and adopted another primary funding source. The Program's budget will be further impacted in future years by its expanded authority and mandated regulatory activities, the continuing decline in the volume of motor oil subject to the MOAF, and an increase in Program expenditures. Because of the reduced funding, the Program will have to significantly cut back its oversight activities and enforcement presence in the marketplace for all motor vehicle fuels, lubricants, and automotive products. This will reduce consumer protection against fuels and products that do not meet specifications leading to reduced vehicle performance and possible vehicle damage. The possibility of inaccurate or misleading product labeling and advertising, as well as unfair or fraudulent business practices, may also be increased if the Department takes no action.

Alternative 2 – Remove the language reverting the MOAF from regulation and maintain it at \$0.04 per gallon:

The current MOAF level of four cents (\$0.04) per gallon is no longer adequate to support the expanded scope and authority, workload, and operating cost requirements necessary for the Program to function. Additionally, as the volume of motor oil subject to the fee continues to decline, Program revenues will be reduced while operating costs will continue to increase. Concurrently, the Program is mandated to regulate and enforce alternative fuels and new automotive products, and will require additional funding for that as well. The growth of alternative fuels, lubricants, and relatively new automotive products are forecasted to significantly increase demands on the Program. The Program will not be able to carry out all its mandated activities while maintaining existing staffing levels and a balanced budget.

The Motor Oil Remittance Form will not be revised, and the annual MOAF reporting criteria will remain at less than 5,000 gallons per year of motor oil production.

Alternative 3 – Source and establish an alternative funding mechanism for Program activities:

Current MOAF funding is a result of legislation adopted in 2009. Any alternative funding source will require another legislative action. The Department does not routinely develop

legislation to provide funding for its Programs, but relies on impacted stakeholders and elected legislators to develop, propose, and adopt laws necessary to support Program activities that benefit California consumers, businesses, and retailers of motor vehicle fuels, lubricants, and automotive products.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations does not conflict with any federal regulations contained in the Code of Federal Regulations. Federal laws or regulations do not mandate the proposed regulations.